

**IN THE UNITED STATES DISTRICT COURT
ALABAMA MIDDLE DISTRICT (Dothan)**

RECEIVED

NO: 1:07-CR-00183- WKW-SRW

2008 FEB 22 P 2:39

UNITED STATES OF AMERICA

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§
§

V.

NO. 1:07-CR-00183- WKW-SRW

RICKEY RANDELL WREX SMITH

**MOTION FOR HEARING TO DETERMINE COMPETENCY
OF THE DEFENDANT TO STAND TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW RICKEY RANDELL WREX SMITH, the Defendant in the above entitled and numbered cause and files his motion requesting a competency hearing and in support thereof would show the Court as follows:

I.

Defendant, by and through his attorney of record, requests a hearing upon the issue of competency of the Defendant to stand trial because the Defendant does not have sufficient present ability to consult with counsel to a reasonable degree of rational understanding, and does not have a rational or factual understanding of the proceedings now pending against said Defendant. *Drope v. Missouri*, 420 U.S. 162 (1975).

The attached affidavit of Alex R. Tandy (Exhibit "A"), which is incorporated herein for all purposes by this reference, indicates that the Defendant suffers from a mental disease or defect which impairs the ability of the Defendant to stand trial.

II.

Pursuant to Article 46.02, Section 4, of the Texas Code of Criminal Procedure, the Defendant requests a hearing, by a jury separate and apart from any jury sworn, selected and impaneled to determine the guilt/innocence of the Defendant, to consider the issue of competency to stand trial.

Such hearing would serve to preserve Defendant's rights under the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Sections 10, 13 and 19 of the Texas Constitution, and Articles 1.04, 1.05 and 1.051 of the Texas Code of Criminal Procedure.

In the event of a finding of incompetency, Defendant would request that the jury further consider whether the Defendant is a person with mental retardation, as defined by Section 591.003 of the Texas Health and Safety Code, and if so, whether the Defendant meets the criteria for commitment to a residential care facility, as provided by Article 46.02, § 6C of the Texas Code of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant herein would pray that the Court schedule this matter for jury trial upon the issue of Defendant's competency to stand trial, and that upon a finding of incompetency, that the jury also consider and render a finding as to the range of treatment opportunities defined by law.

Respectfully submitted,



ALEX R. TANDY
State Bar: 19635000
777 Lonesome Dove Trail
Hurst, TX 76054
Tel: (817) 281-1600
Fax: (817) 485-7588
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion for Hearing to Determine Competency of the Defendant to Stand Trial was served upon the attorney for the State on February 13, 2008 at:

John T. Harman
Nathan D. Stump
U. S. Attorney's Office
P. O. Box 197
Montgomery, AL 36101-0197.

Via Facsimile No. 1-334-223-7560
Via Facsimile No. 1-334-223-7135


ALEX R. TANDY

EXHIBIT "A"

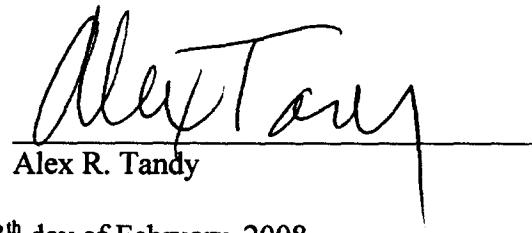
THE STATE OF TEXAS §
COUNTY OF TARRANT §

SUPPORTING AFFIDAVIT OF ALEX R. TANDY

BEFORE ME, the undersigned authority, personally appeared Alex R. Tandy, who, by me duly sworn, deposed as follows:

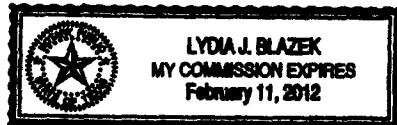
"My name is Alex R. Tandy. I am attorney of record for the Defendant in this case. I am of sound mind and capable of making this affidavit. I am personally acquainted with the facts stated in Motion for Hearing to Determine Competency of Defendant to Stand Trial, and they are true and correct.

Further affiant sayeth not."


Alex R. Tandy

Subscribed & Sworn to before me on this 13th day of February, 2008.


Lydia J. Blazek
Notary Public - State of Texas



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ORDER

BE IT REMEMBERED, that on the _____ day of _____, 2008, came on to be considered the Defendant's motion seeking a determination of the issue of competency to stand trial. Upon consideration of the motion and argument of counsel, the motion is:

_____ (GRANTED)

_____ (DENIED, to which ruling the Defendant excepts.)

SIGNED on the _____ day of _____, 2008.

JUDGE PRESIDING